IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11116 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL KANUBHAI RANCHHODBHAI

Versus

REGIONAL PASSPORT OFFICER

Appearance:

1. Special Civil Application No. 11116 of 2002

MR HITESH B PATEL for Petitioner No. 1

MR N.J.SHAH for MR DN PATEL for Respondent No. 1

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 30/10/2002

ORAL JUDGEMENT

Rule. Mr. N.J.Shah, learned advocate appears and waives service of notice of rule on behalf of the Respondents/Passport Authority.

2. Looking to the nature of the urgency in the matter and on the facts and in the circumstances of the case, by the consent of the learned advocates appearing for the parties, matter is taken up for final hearing today.

3. In this petition which is filed under Article 226 of the Constitution, petitioner has prayed to issue a writ of mandamus or appropriate writ, order or direction to direct the Respondents/Passport Authority to rectify the mistake crept in while applying for fresh Passport by the petitioner in the passport application in mentioning the birth date as 1.3.1945 instead of 2.11.1944. As the petitioner is desirous of immigrating to foreign country, petitioner applied for issuance of fresh Passport in the prescribed form. Thereafter, petitioner came to know about the discrepancy of the birth date mentioned in the Passport application. The petitioner, therefore, applied to the Passport Authority to correct the birth date, however, the Passport Authority have declined to consider the same in the absence of any order passed by the competent Court.

4. On behalf of the Passport Authority, it has been contended that, earlier, on the basis of the school leaving certificate Passport has to be issued to the petitioner. However, if this Court direct the Passport Authority, they will consider the matter in light of the direction issued by the this Court.

5. It is settled principle of law that if there is any discrepancy in the birth date recorded in the birth certificate issued by the competent authority and any other document, the former should normally prevail.

6. Having considered the submissions advanced by the learned advocates appearing for the parties and on having perusal of the averments made in the memo of the petition and the grounds set out therein and on the facts and in the circumstances emerging from the record of the case, I am of the opinion that this petition deserves to be allowed by issuing appropriate direction to the Respondents/Passport Authority to consider the application of the petitioner afresh and decide the same on the basis of the material which may be placed before the Respondents/Passport Authority in accordance with law.

7. It is also brought to the notice of this Court that in similar matters this Court has issued orders giving direction to the Passport Authority to reconsider

the matter and to pass appropriate order and thereafter to incorporate necessary correction in the Passport application and to issue fresh Passport.

8. For the foregoing reasons, petition succeeds and accordingly it is allowed and resultantly, it is hereby directed to the Respondents/Passport Authority to consider the case of the petitioner for change in the birth date from 1.3.1945 to 2.11.1944 in the Passport application of the petitioner and to pass appropriate order on the basis of the material which may be placed before the Passport Authority, and in accordance with law. The Respondents/Passport Authority shall take the decision within a period of six weeks from the date of receipt of the writ of this Court. However, the petitioner shall pay costs of Rs.2500/- to the Respondnts/Passport Authorities since the Passport Authorities cannot be saddled with costs of litigation.

Rule is made absolute to the aforesaid extent.
DS permitted.

(A.M.Kapadia,J)

Jayanti*